

APPROVED

MINUTES

SCOTTSDALE CITY COUNCIL

TUESDAY, APRIL 20, 2004

**CITY HALL KIVA
3939 DRINKWATER BOULEVARD
SCOTTSDALE AZ 85251**

MINUTES
SCOTTSDALE CITY COUNCIL
Tuesday, April 20, 2004

CALL TO ORDER

Mayor Manross called to order a Regular Meeting of the Scottsdale City Council on Tuesday, April 20, 2004 in the Kiva, City Hall, at 5:02 P.M.

ROLL CALL

Present: Mayor Mary Manross
Vice Mayor Wayne Ecton
Council Members Robert Littlefield, Ned O'Hearn, Roberta Pilcher,
David Ortega, and Tom Silverman

Also Present: City Manager Jan Dolan
City Attorney Joseph Bertoldo
City Clerk Carolyn Jagger

Pledge of Allegiance

Brownies from Troop #368 at Kachina Country Day School, one cadet from Troop #653 of Ingleside Middle School, and Troop Leader Tina Roderique, led the audience in the pledge.

Invocation

Pastor Ray Barton from Scottsdale Bible Church gave the invocation.

Presentations

Historic Society Coloring Book: Don Hadder presented the Council with coloring books prepared by the Historical Society. He noted that the books are currently for sale at the museum.

School Building Week Proclamation: Mayor Manross proclaimed April 19-23, 2004, as School Building Week and presented the proclamation to Mark Gilberg, CEFPI, of the School Building Association.

Bureau of Reclamation Outstanding Recreation Manager's Award: Carol Erwin of the Bureau of Reclamation presented an award to Brad Gessner, Kenny Baker, and Brent Bailey for their service at WestWorld.

Information Update

Presentation by Enhanced Municipal Services Chairman Scudder Gookin: Mr. Gookin reviewed activities of this newly formed Commission, which included creating by-laws, reviewing marketing techniques, and putting together a downtown events calendar.

Appointments

COUNCILWOMAN PILCHER MOVED TO APPOINT TWENTY-TWO CITY COURT PRO-TEM JUDGES TO SERVE FOR THE PERIOD OF MAY 14, 2004 TO MAY 16, 2006. VICE MAYOR ECTON SECONDED THE MOTION, WHICH CARRIED 7/0.

Boards, Commissions and Task Forces

Industrial Development Authority (1) - **Ronald Finkel** was appointed by a majority vote.

Library Board (1) - **Linda Tardie** was appointed by a majority vote.

Neighborhood Enhancement Commission (2) - **Lisa Haskell** and **James Pompe** were appointed by a majority vote.

Personnel Board (1) - **Armando Flores** was appointed by a majority vote.

Scottsdale Pride Committee (2) - **Ronald Robins** and **Donald Scott** were appointed by a majority vote.

Tourism Development Commission (2) - **Gordon Zuckerman** and **John Holdsworth** were appointed by a majority vote.

Public Comment

Randy Nussbaum, 8623 E Thoroughbred Tr, 85258, and Daniel Basinger, 2405 N 107th Pl, 85262, of the Environmental Quality Advisory Board, thanked everyone involved in EnviroKids Fest and SolFest for making them successful.

Michael Merrill, 8713 E Vernon Av, 85257, thanked city staff and council members for their continued support and their actions in addressing concerns in the mature area of the city.

Minutes

REGULAR MEETINGS
April 5, 2004

VICE MAYOR ECTON MOVED FOR APPROVAL OF THE REGULAR MEETING MINUTES OF APRIL 5, 2004. COUNCILWOMAN PILCHER SECONDED THE MOTION, WHICH CARRIED 7/0.

Mayor Manross noted that Item 22, the South Bank Canal Mixed Use Development with Public Underground Parking Garage, was removed from the agenda and requested a motion to continue the item to May 4, 2004.

COUNCILMAN ORTEGA MOVED TO CONTINUE ITEM 22 TO MAY 4, 2004. COUNCILWOMAN PILCHER SECONDED THE MOTION, WHICH CARRIED 7/0.

CONSENT AGENDA ITEMS 1 - 19

1. **The Myst Ballroom Liquor License**

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a person transfer of a series 6 (bar) State liquor license for an existing bar location currently operating under the business name Sanctuary.

Location: 7340 E. Shoeman Lane

Reference: 13-LL-2004

Staff Contact(s): Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Bob Bushfield, Development Review and Permit Services Director, 480-312-7096, bbushfield@scottsdaleaz.gov

2. **Sunflower Market Liquor License**

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 9 (liquor store) State liquor license for a location currently operating with a series 10 (beer/wine store) license.

Location: 4402 N. Miller Road

Reference: 14-LL-2004

Staff Contact(s): Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Bob Bushfield, Development Review and Permit Services Director, 480-312-7096, bbushfield@scottsdaleaz.gov

3. **Cactus Food Mart Liquor License**

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 10 (beer/wine store) State liquor license for an existing convenience store location that previously operated with a series 10 licenses under the business name Scottsdale Convenience Mart.

Location: 8040 E. Thomas Road

Reference: 15-LL-2004

Staff Contact(s): Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Bob Bushfield, Development Review and Permit Services Director, 480-312-7096, bbushfield@scottsdaleaz.gov

4. **4 Sons Food Store Liquor License**

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 10 (beer/wine store) State liquor license for an existing convenience store location that previously operated with a series 10 license under the business name Chevron.

Location: 11425 E. Via Linda

Reference: 16-LL-2004

Staff Contact(s): Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Bob Bushfield, Development Review and Permit Services Director, 480-312-7096, bbushfield@scottsdaleaz.gov

5. Shanghai Palace Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a person transfer of a series 7 (beer/wine bar) State liquor license for an existing establishment, currently operating with a series 7 license.

Location: 7901 E. Thomas Road

Reference: 18-LL-2004

Staff Contact(s): Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Bob Bushfield, Development Review and Permit Services Director, 480-312-7096, bbushfield@scottsdaleaz.gov

6. DC Ranch Street Abandonment

Requests: Consider the following:

1. Abandon a 280 +/- foot portion of the right-of-way for Horseshoe Canyon Drive at the east side of the intersection of Thompson Peak Parkway and Horseshoe Canyon Drive.
2. Reserve a public utility easement over, under, and across the abandoned right-of-way.
3. Reserve an emergency and service vehicle access easement over and across the abandoned right-of-way.
4. Reserve a public access easement over and across the north ten (10) feet of the abandoned right-of-way.
5. Adopt Resolution No. 6475 vacating and abandoning a portion of right-of-way and roadway easement.

Location: East of the Intersection of Horseshoe Canyon Drive and Thompson Peak Parkway

Reference: 12-AB-2003

Staff Contact(s): Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov; Tim Curtis, Project Coordination Manager, 480-312-4210, tcurtis@scottsdaleaz.gov

7. McDowell Mountain Community Church Abandonments

Requests:

- Abandon the 33-foot wide Government Land Office (GLO) roadway and utility easement along the property boundaries of GLO Lots 25.
- Abandon the 33-foot wide GLO roadway and utility easement along the south, east, west and northern 125 feet of GLO lot 26.
- Abandon the 33-foot GLO roadway and utility easement along the east, west and southern property boundary of GLO lot 27.
- Adopt Resolution No. 6470 vacating and abandoning a portion of right-of-way and roadway easement.

Location: 10700 N. 124th Street (northwest corner of Shea Boulevard and 124th Street)

Reference: 11-AB-2003

Staff Contact(s): Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov; Greg Williams, Senior Planner, 480-312-4205, gwilliams@scottsdaleaz.gov

Mayor Manross opened public testimony.

Lyle Wurtz, 6510 E Palm Ln, 85257, stated his belief that it is time to get an opinion from a higher court in regard to abandonments. In addition, he read a letter into the record (attached) from John Aleo, which stated Mr. Aleo's position regarding GLO easements. Mr. Wurtz wondered what the legal consequences would be if this issue is not resolved through a higher court.

Leon Spiro, 7814 E Oberlin Wy, 85262, requested a staff presentation. Mayor Manross reminded Mr. Spiro that this item is on the Consent Agenda. If an item is on the Consent Agenda, a staff presentation is not required unless the Council specifically requests a presentation. The Mayor explained that, at this time, there is no Council interest in having a staff presentation for this item.

Mr. Spiro asked the city to get a legal opinion from the Arizona Attorney General regarding abandonment issues. He reviewed the city's position and expressed his opposition.

Mayor Manross closed public testimony.

8. Corriente by Starpointe Rezoning Requests:

1. To rezone from Resort/Townhouse Residential District (R-4R) and Open Space District (O-S) to Multi-Family Residential District (R-5) on a 9.28 +/- acre parcel located at 7601 E. Indian Bend Road.
2. To adopt Ordinance No. 3560 affirming the above rezoning.

Location: 7601 E. Indian Bend Road

Reference: 23-ZN-2003

Staff Contact(s): Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov; Kira Wauwie, Project Coordination Manager, 480-312-7061, kwauwie@scottsdaleaz.gov

Mayor Manross opened public testimony.

Cliff Bedell, 7631 E Indian Bend, 85250, stated his support of the zoning case, but pointed out difficulties in making a right turn in the area. He recommended another access point onto Indian Bend Road.

Mr. Ekblaw said that staff was currently studying the issue.

Mayor Manross closed public testimony.

9. Children's Ministry Center - New Covenant Lutheran Church Rezoning and Conditional Use Permit Requests:

1. To rezone from Commercial Office District, Planned Community Development (C-O PCD) to Single Family Residential District, Planned Community Development (R1-5 PCD) on a 1.98 +/- acre parcel located at 15152 N. Frank Lloyd Wright Blvd.
2. To approve a conditional use permit to allow a private/charter school (pre-school) on a 1.98 +/- acre parcel located at 15152 N. Frank Lloyd Wright Blvd.
3. To adopt Ordinance No. 3561 affirming the above rezoning.

Location: 15152 N. Frank Lloyd Wright Boulevard

Reference: 3-ZN-2004 and 3-UP-2004

Staff Contact(s): Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov; Al Ward, Senior Planner, 480-312-7067, award@scottsdaleaz.gov

10. Village @ Iron Mountain (formerly Scottsdale Heights) Replat

Request: Approve re-plat for a twenty-three (23) lot single-family subdivision on a parcel of approximately 14 acres.

Location: North of the northeast corner of Scottsdale Road and Mary Sharon Drive

Reference: 6-PP-2001

Staff Contact(s): Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov; Al Ward, Senior Planner, 480-312-7067, award@scottsdaleaz.gov

11. Mirabel Village 8 East and West Final Plat

Request: Approve final plat for a 66-lot subdivision with amended development standards on a parcel of approximately 56.2 acres.

Location: South of Lone Mountain Parkway, between Standing Stones and Joy Ranch Roads

Reference: 16-PP-2003

Staff Contact(s): Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov; Greg Williams, Senior Planner, 480-312-4205, gwilliams@scottsdaleaz.gov

12. WestWorld Facility Use License with Scottsdale Active 20/30 Club/Foundation to Host Nite Flite Event

Request: Approve the WestWorld Facility Use License with the Scottsdale Active 20/30 Club for use of the WestWorld polo field east to host the Nite Flite Tent Party event on the first Saturday in October in 2004, 2005, and 2006 at the discounted rate of \$933.40 per year.

Related Policies, References: City Code 2-221(c) states: The City Manager or designee shall have the authority to enter into temporary licenses or similar agreements for the use of City-owned property, including but not limited to, land, buildings, office space, rooms, and other interior and exterior space, but not city rights-of-way. Such agreements shall be in the form approved by the City Attorney. Such agreements shall have a term of one (1) year or less and a unilateral termination clause in favor of the City that does not require the City to give more than thirty (30) days' notice of cancellation. Any license or other such agreement not meeting these criteria requires approval by the City Council.

Staff Contact(s): Brad Gessner, WestWorld General Manager, 480-312-6825, bgessner@scottsdaleaz.gov

13. WestWorld Facility Use License with Region VII Arabian Horse Association

Request: Approve a three-year Facility Use License with Region VII-IAHA to utilize WestWorld's equestrian facilities for their 2004, 2005 and 2006 Regional Arabian Horse Shows held each April.

Related Policies, References: City Code 2-221(c) states: The City Manager or designee shall have the authority to enter into temporary licenses or similar agreements for the use of City-owned property, including but not limited to, land, buildings, office space, rooms, and other interior and exterior space, but not city rights-of-way. Such agreements shall be in the form approved by the City Attorney. Such agreements shall

have a term of one (1) year or less and a unilateral termination clause in favor of the City that does not require the City to give more than thirty (30) days' notice of cancellation. Any license or other such agreement not meeting these criteria requires approval by the City Council.

Staff Contact: Brad Gessner, WestWorld General Manager, 480-312-6825, bgessner@scottsdaleaz.gov

Responding to questions regarding timing from Councilman O'Hearn, Ms. Dolan confirmed that a routine process was followed.

14. Rassner/Library and Scottsdale Community/Human Services Endowments

Request: Consider approving the distribution of interest income from City's endowment program; including the recommendation from the Library Advisory Board for an award of \$20,350 to the library and the recommendation of the Human Services Commission for awards of \$1,250 to Concerned Citizens for Community Health for Vista del Camino Ballet Folklorico and \$2,100 to Concerned Citizens for Community Health for Yaqui Youth Leadership Training.

Staff Contact(s): Debra Baird, General Manager, Community Services, 480-312-2377, dbaird@scottsdaleaz.gov; Sharyn Pennington, Budget/Operations Coordinator, 480-312-7086 shap@scottsdaleaz.gov; Cindy Ensign, Human Services Planner/Budget Specialist, 480-312-2646 censign@scottsdaleaz.gov

15. Proposed Amendment to Disabled Parking Ordinance

Requests:

1. Consider approving the proposed amendment to the disabled parking ordinance. This amendment would clarify current ordinance and would enable the City to issue notices of violation to vehicles parked in the painted hash-marked area adjacent to each parking space that is reserved for use by the physically disabled.
2. Adopt Ordinance No. 3567 adopting the proposed amendment.

Related Policies, References:

- Chapter 17, Article V, Section 17-124 of the Scottsdale Revised Code, relating to stopping, standing or parking in places reserved for the physically disabled
- Americans with Disabilities Act Accessibility Guidelines, published in the Federal Register/Vol. 56, No. 144/July 26, 1991

Staff Contact(s): Alan Rodbell, Chief of Police, 480-312-5000, arodbell@scottsdaleaz.gov; John Cocca, Deputy Chief of Police, 480-312-5370, jcocca@scottsdaleaz.gov; Bruce Kalin, Police Contract Administrator, 480-312-7014, bkalin@scottsdaleaz.gov

Mayor Manross opened public testimony.

Tami Harris, 7718 N Via de Fonda, 85258, spoke in support of the proposed amendment and urged Council to approve it.

Mayor Manross closed public testimony.

16. Modification of Assessment for the Bell II Improvement District

Request: Adopt Resolution No. 6464 which will modify improvement district assessment number 000.007 for water lines, sewer lines and street improvements within the Bell II Improvement District, Series No. 106.

Related Policies, References:

- Resolution 5751, declaring the intention to form the improvement district, adopted by Council on February 4, 2001.
- Resolution 5832, ordering work to begin within the district, adopted by Council on June 5, 2001.
- Resolution 5961, approving the Assessment Diagram and Ordering the Sale of Not to Exceed \$7.9 Million Improvement District (ID) Bonds, adopted by Council on November 5, 2001.
- Resolution 6262 approving final assessments, adopted by City Council on April 1, 2003.

Staff Contact(s): Roger Klingler, Assistant City Manager, 480-312-5830, rklingler@scottsdaleaz.gov; Al Dreska, Municipal Services General Manager, 480-312-5555, adreska@scottsdaleaz.gov; Robert M. Johnson, CIP Coordination Manager, 480-312-7054, rmjohnson@scottsdaleaz.gov

17. Intergovernmental Agreement (IGA) between the City and the Salt River Pima-Maricopa Indian Community for Transfer Services, and for Solid Waste, Recycling and Green Waste Disposal Services

Request: Adopt Resolution No. 6474 and authorize Intergovernmental Agreement (IGA) # 940041A, which modifies, amends and restates the current landfill service agreement(s) with the Salt River Pima-Maricopa Indian Community and the Salt River Commercial Landfill Company for the transfer and disposal of non-hazardous solid waste and recyclable materials generated by the residents and businesses of Scottsdale.

Related Policies, References: IGA # 940041A (Modified and Restated August 1998); IGA # 940041A (Amended December 2000); Chapter 24 (Solid Waste Management) of the Scottsdale Revised Code. This agreement is made under the authority established in Article 1, Section 3.J. and Article 1, Section 3-1. of the Scottsdale City Charter.

Staff Contact(s): Roger Klingler, Assistant City Manager, 480-312-5830, rklingler@scottsdaleaz.gov; Al Dreska, Municipal Services General Manager, 480-312-5555, adreska@scottsdaleaz.gov; Rick Pence, Solid Waste Management Director, 480-312-5605, rpence@scottsdaleaz.gov

Mayor Manross opened public testimony.

Daniel Basinger, 24503 N 107th PI, 85262, spoke in support of the proposed IGA on behalf of the Environmental Quality Advisory Board. He was very impressed with the landfill and quality of service of the facility.

Mayor Manross closed public testimony.

18. Settlement of lawsuit entitled Scottsdale 275, LLC. v. City of Scottsdale, Commonly Referred to as Scottsdale National

Request: Adopt Resolution No. 6478 authorizing the Mayor to execute Settlement Agreement and Development Agreement, Contract No. 2004-033-COS to settle Scottsdale 275, LLC v. City of Scottsdale, et al, currently pending in Arizona District Court, Cause No. CIV 02-0041 PHX MHM.

Related Policies, References: Prior resolutions (No. 6295, 6043); prior contracts for legal services (No. 2002-032-COS; 2002-032A-COS)

Staff Contact(s): Joseph R. Bertoldo, City Attorney, 480-312-2405, jbortoldo@scottsdaleaz.gov; Deborah W. Robberson, Deputy City Attorney, 480-312-2405, drobberson@scottsdaleaz.gov

Mayor Manross opened public testimony.

Margaret Daleo, 31317 N 163rd St, 85262, requested a continuance in order to receive more public input. She stated her opinion that Scottsdale National should be required to adhere to the same stipulations as the other thirty acres, which were already approved.

Sam West, 8160 N Hayden Rd, 85258, also requested a continuance. He expressed concern with septic issues and stated his belief that there are other questions that need to be resolved.

Responding to Councilman Ortega, Deborah Robberson stated that legal fees for outside counsel total approximately \$230,000 at this time. Although Ms. Robberson did not know the in-house costs, however, she noted that there has been significant staff time expended attending to the issues of the case.

Mayor Manross closed public testimony.

Mayor Manross stated her belief that the agreement is a fair resolution. Councilman O'Hearn agreed. He stated his belief that the agreement would save the city money and create a good relationship with the landowner.

19. Contract for Legal Services in Connection with City of Scottsdale v. Bruce Corey, et. al

Request: Adopt Resolution No. 6476 authorizing the Mayor to execute Contract No. 2003-166A-COS, an outside counsel contract renewal in a maximum amount of One Hundred Thousand Dollars (\$100,000) with the law firm of AYERS & BROWN, P.C. for legal services regarding representation of the City of Scottsdale in the litigation entitled City of Scottsdale v. Bruce Corey, et al, Superior Court Case No. CV2000-017994, an eminent domain action brought to acquire real property for McDowell Sonoran Preserve.

Related Policies, References: Resolution No. 6476

Staff Contact(s): Joseph R. Bertoldo, City Attorney, 480-312-2405, jbortoldo@scottsdaleaz.gov; Bruce Washburn, Assistant City Attorney, 480-312-2405, bwashburn@scottsdaleaz.gov

Mayor Manross opened public testimony.

Leon Spiro, 7814 E Oberlin Wy, asked the location of the parcel, how much money was spent in legal fees, how much Ayers and Brown had collected so far, and how much was spent prior to Ayers and Brown receiving the contract.

Mayor Manross closed public testimony. She explained that details are available from staff to answer any questions citizens may have regarding this issue.

MOTION AND VOTE – CONSENT AGENDA

COUNCILMAN LITTLEFIELD MOVED FOR APPROVAL OF CONSENT AGENDA ITEMS 1 THROUGH 19. COUNCILWOMAN PILCHER SECONDED THE MOTION, WHICH CARRIED 7/0.

Regular Agenda Items 20 - 23

20. Public Hearing on Scottsdale's Community Development Block Grant Fiscal Year 2004-05 One-Year Annual Action Plan

Requests:

1. Solicit public testimony regarding the Fiscal Year 2004-05 Annual Action Plan for the use of Community Development Block Grant (CDBG) allocated funds in the amount of \$1,389,000; the HOME Investment Partnerships Program (HOME) allocated funds in the amount of \$417,889; and the American Dream Downpayment Initiative (ADDI) funds in the amount of \$28,856 for FY 2003-04 and \$33,741 for FY 2004-05; and
2. Adopt Resolution No. 6459 which:
 - Authorizes the submittal of Scottsdale's Annual Action Plan, and approves the execution of a contract with the U.S. Department of Housing and Urban Development (HUD) for CDBG funding;
 - Approves the return of city Housing Rehabilitation program income to the City's CDBG Line of Credit to be expended on eligible rehabilitation activities;
 - Approves the recommendations of the Human Services Commission for the allocation of Fiscal Year 2004-05 CDBG and HOME funds, Scottsdale Cares projects in the amount of \$190,000, and Human Services General Fund projects in the amount of \$180,000 for public services and \$200,000 for affordable housing;
 - Authorizes and awards contracts to agencies to be funded with Fiscal Year 2004-05 CDBG, HOME, and ADDI funds, subject to final negotiation of scopes of work and the execution of the HUD contract;
 - Authorizes and awards contracts to agencies funded through Scottsdale Cares and General Funds; and
 - Approves reprogramming of remaining resources under prior years' funding.

Related Policies, References: City Council adopted Resolution No. 5501 on March 20, 2000, which authorized and adopted the City of Scottsdale's Consolidated Plan for general use of CDBG funding and HOME funds for Fiscal Years 2000/2004.

Staff Contact(s): Debra Baird, Community Services General Manager, 480-312-2377, dbaird@scottsdaleaz.gov; Mark Bethel, Community Assistance Manager, 480-312-2304, mbethel@scottsdaleaz.gov

Mark Bethel and Diane Fausel reviewed the recommended funding for CDBG and HOME, as well as funds from the General Fund and Scottsdale Cares for public services, totaling \$2,177,846. Of the fifty-six requests, forty-three were recommended for funding.

Responding to Vice Mayor Ecton, Mr. Bethel said the rental housing rehab project is owned by a non-profit agency in the business of managing these sixteen units in two developments.

Mayor Manross commended the Housing Board and Human Services Commission on their difficult decisions regarding funding.

MOTION AND VOTE – ITEM 20

COUNCILMAN SILVERMAN MOVED FOR ADOPTION OF RESOLUTION 6459. COUNCILWOMAN PILCHER SECONDED THE MOTION, WHICH CARRIED 7/0.

21. Text Amendment/Environmentally Sensitive Lands Ordinance (ESLO II)

Requests:

1. Amend Ordinance 455 (Zoning Ordinance) Article VI. Supplementary Districts, Section 6.1010. Environmentally Sensitive Lands Ordinance (ESLO); Section 6.1011. Purpose; Section 6.1022. Exemptions and Exceptions; Section 6.1050. Intensity of Development; Section 6.1060. Open Space Requirements; Section 6.1070. Design Standards; Section 6.1071. Design Guidelines; Section 6.1083. Amended Development Standards; Section 6.1090. ESL Submittal Requirements; Section 6.1091. All Applications.
2. Adopt Ordinance No. 3540 affirming the above text amendment.

Location: This covers approximately 134 square miles of upper desert and mountain areas of Scottsdale and is located north and east of the Central Arizona Project (CAP) Canal

Reference: 11-TA-2000#3

Staff Contact(s): Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov; Al Ward, Senior Planner, 480-312-7067, award@scottsdaleaz.gov

Kroy Ekblaw introduced the ESLO-2 update revisions for discussion, reviewing the history, the community input, and the three key issues of wash protection/drainage issues, perimeter/site walls, and exemptions/exceptions. Mr. Ekblaw also reviewed revisions made as a result of input from Planning Commission hearings.

Mayor Manross opened public testimony.

Daniel Basinger, 29503 N 107th PI, 85262, spoke in support of the amendment on behalf of the Environmental Quality Advisory Board. The board held a special meeting on March 2, 2004 to review the document and make recommendations to the Planning Commission.

James Dellaripa, 10525 E Honey Mesquite, 85262, President of Desert Mountain Homeowners Association, stated his opinion that the existing residents in the area should be able to continue under their same regulations. He noted that the association understands the city's intentions for future development and is willing to cooperate with the city, even though the existing residents wouldn't be receiving the full grandfathering rights to which they are entitled.

Eddie Shannon, 30068 N 77th PI, 85262, with Friends of the Scenic Drive, described her home and the wash behind it. She noted that the same animals are still around the home after ten

years. She thanked staff for their hard work in putting the revisions together and urged Council to accept them.

Steven Voss, LVA Urban Design Studio, 7502 E Main St, 85251, represented seven clients. He thanked staff for working with his clients and offered some suggestions relating to the effective date of the revisions and the construction envelopes on smaller lots. He also suggested the DR Board be empowered to deal with exemption issues rather than Council.

Sam West, 8160 E Hayden Rd, complimented staff on the difficult process. He expressed concern about erosion in washes, changing rules in the middle of the process, and having more stringent exemptions.

Lynn Lagarde, 3101 N Central #1000, Phx, 85012, representing master planned communities of Ancala, Desert Mountain, Estancia, Four Seasons, Grayhawk, Whisper Rock and Sonoran Quest, said her clients were prepared to support the current amendments. Their best protection would be full grandfathering, but they were willing to accept a compromise. She suspected there was a typo on the Exemption Schedule and suggested it read, "if addressed in approved master plans" instead of "amended standards." She read a letter into the record (attached) from Jon Underwood of Desert Mountain expressing their concerns.

In response to Councilman Ortega, Ms. Lagarde said she agreed with Mr. Voss about delaying the effective date to allow projects already in progress to be completed.

Howard Myers, 6631 E Horned Owl Tr, 85262, presented photographs of examples of fences and walls in major washes that the ordinance would address, as well as aerial views of developments in R1-43 and R1-35, which followed the rules. He urged Council to pass all of the amendments.

Scott Kusy, 7700 E Gainey Ranch Rd, owner of several properties that would be impacted, said he worked with staff and, as a whole, approved of the amendments.

Shelly McTee, DMB Associates, 11201 N Tatum, Phx, 85028, expressed gratitude to staff for working with them to address their concerns.

Mayor Manross closed public testimony.

Councilman O'Hearn commented that the Planning Commission did the difficult groundwork. Staff also worked diligently with the State Land Department. He reiterated there would be no change in NAOS requirements. He noted that the burden of proof for why a perimeter wall should be constructed would be on the developer; where it belonged. Exemptions for master planned communities were appropriate because their standards are higher than city standards. In regard to Mr. Voss's request to delay the effective date of these revisions, Councilman O'Hearn felt it was better to resolve the problem by applying for exemption, which is an easy process.

MOTION – ITEM 21

COUNCILMAN O'HEARN MOVED TO AMEND ORDINANCE 455 AND ADOPT ORDINANCE 3540. VICE MAYOR ECTON SECONDED THE MOTION (which carried with changes 7/0).

Responding to Councilman Ortega, Mr. Ekblaw agreed with Ms. Lagarde's suggestion on the Exemption Schedule regarding master planned communities. He also clarified that hardship exemptions would come to the Council as part of a zoning case or final plat.

COUNCILMAN O'HEARN AND VICE MAYOR ECTON AGREED TO THE WORDING CHANGE INDICATED BY MR. EKBLAW.

VOTE – ITEM 21

THE MOTION FOR APPROVAL, WITH THE WORDING CHANGE ON THE EXEMPTION SCHEDULE, CARRIED 7/0.

*****22. South Bank Canal Mixed Use Development with Public Underground Parking Garage – Continued to May 4, 2004**

23. Review of Fiscal Year 2004-05 Operating Budget and Comprehensive Financial Policies

Staff Contact(s): Craig Clifford, Financial Services General Manager/CFO, 480-312-2364, cclifford@ScottsdaleAZ.gov; Arthur Rullo, Budget Director, 480-312-2435, arullo@scottsdaleaz.gov

City Manager Jan Dolan explained that tonight is the beginning of the public process before the full Council on the budget. She noted that the Council subcommittee would be presenting their findings and recommendations to Council on May 3, 2004. Ms. Dolan stated that tonight Council would receive an overview of the budget as proposed by staff. She cautioned that with only three or four months of improved economic indicators, it could not be said that the city is experiencing an economic recovery. There are still many unmet needs in the community.

Craig Clifford said financial policies have been developed and Council will be asked to adopt them at the May 17, 2004 Council meeting. Mr. Clifford reviewed the proposed budget for 2004/05 allocating \$353M for Operating Budgets, \$22.2M for Grant and Trust Budget, and \$729.6M for Capital Project Budget, and also reviewed revenues.

In response to Councilman Ortega's questions regarding impacts to major projects going up on Pima Road to the east of the city, Mr. Clifford said he would acquire more specific information from the Economic Vitality office for Council.

Mr. Clifford, responding to further questions from Councilman Ortega, reported that fire department transition costs conservatively are estimated at \$600,000. State shared revenues have seen some improvement but staff remain conservative in their estimates. The General Fund Reserve is set at 10% of the General Fund and Highway User Revenue expenditures, or about \$20M.

Vice Mayor Ecton said one of his concerns pertain to unfunded mandates from the State and Federal Governments, as there is no way to plan for the mandates.

Mr. Clifford recognized the outstanding work of individuals in the Budget Office in preparing the budget.

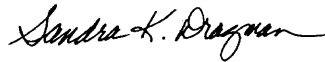
City Manager's Report - None

Mayor and Council Items - None

Adjournment

With no further business to discuss, Mayor Manross adjourned the meeting at 8:33 P.M.

SUBMITTED BY:



Sandy Dragman
Recording Secretary

REVIEWED BY:



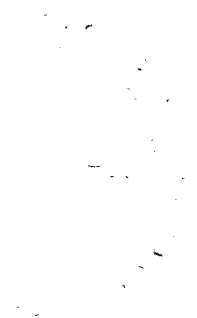
Carolyn Jagger
City Clerk


CERTIFICATE

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular City Council Meeting of the City Council of Scottsdale, Arizona held on the 20th day of April 2004.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this 22nd day of April 2004.





CAROLYN JAGGER
City Clerk

JOHN ALEO
REALTOR®
Since 1965

28625 North 83rd Street
Scottsdale, Arizona 85262
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Email: <mailto:jsaleo@msn.com>
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Tuesday, April 20, 2004

To Be Read Into the Minutes of GLO Patent Easement Abandonment Hearing

Case: 11-AB-2003

To whom this may concern:

General Land Office (GLO) patent easements for roadway and public utility were created under federal law. There are no provisions in the federal law to abandon said patent easements or remove them from a plat of survey.

The beneficial interest held by the "affected parties" in a patent easement is a private access right and private property right passed on through the deed perpetually. To block, impede, or interfere with a GLO patent easement is a violation of those rights which has been upheld by the courts, and creates a potential material defect to the title that requires disclosure by the property owner. A standard lender's title insurance policy does not cover the ramifications created by the potential material defect.

To issue a building permit to allow the erection of a permanent structure onto said patent easement is a violation of the federal law and creates a potential liability for the property owner. At some point time, the property owner may have to remove the structures erected onto the GLO patent easement at his expense.

The "affected parties " are all those patentees and/or subsequent owners who own property in that GLO subdivided area, and all past, present, and future utility companies.

The city's policy to abandon/revoke " their interest " in any GLO patent easement does not give cause for the city to issue building permits to erect permanent structures onto said patent easements that will block, impede, or interfere with same.

The owners of subject property, utility companies, and all "affected parties", should question the action the City of Scottsdale may take regarding the abandonment of GLO patent easements on subject property.

All "affected parties" should reference at least two Arizona lawsuits: **Bernal v Loeks** and **Hampton v Zellman**. In a recent letter to me dated **January 20, 2004** from the Department of Interior-Solicitor's Office, it states that these two cases are relevant to the treatment of the beneficial interest in patent easements of the "affected parties". It is also mentioned in said letter that these rights are to be enforced. In addition, attached documentation in said letter

verifies that patent easements are to remain in perpetuity. (Note: Ms. Bronski, Deputy Assistant City Attorney, has a copy of said letter.)

This information should be given to the applicant and others.

Sincerely,

John S. Aleo
CRB, CRS, GRI

ESTANCIA®
COMMUNITY ASSOCIATION, INC.

April 20, 2004

Honorable Mayor Mary Manross & Council Members
CITY OF SCOTTSDALE
7447 E. Indian School Road
Scottsdale, AZ 85251

Dear Mayor and Council Members:

On behalf of the Estancia Community Association I would like to acknowledge our support of the amended version of the Environmentally Sensitive Land Ordinance which you will be considering at your meeting this evening. We are, however, concerned with the decision to not grandfather existing Master Planned Communities on all portions of the new ordinance.

We would hope that in your discussions and in a motion to approve the new ordinance that language be included to acknowledge that the Grand Fathering provisions included are intended to cover this revision and all future revisions.

Though Estancia is over fifty percent completed, the remaining lots may involve construction and design that covers a period of 10 to 15 years or more. We feel it is important to insure that the protections for current developments included in the ordinance carry forward and we aren't suddenly facing more restrictive changes in the future.

Your consideration of this matter and the care with which it has been formulated is appreciated by all of us.

Sincerely,
For the Board of Directors



Ronald Burns
President

ESTANCIA®
COMMUNITY ASSOCIATION, INC.

December 5, 2003

Honorable Mayor Mary Manross & Council Members
CITY OF SCOTTSDALE
7447 E. Indian School Road
Scottsdale, AZ 85251

Dear Mayor and Council Members:

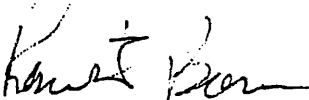
On behalf of the Estancia Community Association I would like to request that the Council not require approved Master Planned Communities to be covered by the revised building heights or other changes being proposed under the revisions to the ESL Ordinance. Our custom lot development is approximately one-third complete but this change would mean that the remaining homes would face more limiting criteria than those already built.

Estancia's Design Guidelines limit roof heights more stringently than most communities. The Guidelines limit roofs to a maximum of 24 feet above existing natural grade. There are, however, minor variances above this height permitted by the Design Review Committee for special conditions or for special designs. These variances are limited in area and restricted to minor differentials in height. We feel it is important to continue to have this option available to us.

All Master Planned Communities should have the right to continue to operate under design guidelines that were created to insure conformance with ordinances that existed when the Communities were approved by the City Council. Changing these in mid-development would be unfair to those property owners who had every right to expect equal treatment to those who have been built under current restrictions.

We appreciate your consideration of this and feel that grandfathering the limitations already in place for existing planned communities is the most reasonable and prudent thing to do.

Sincerely,
For the Board of Directors



Ronald Burns
President



Jon O. Underwood
President

April 19, 2004

Mayor Mary Manross
Members of City Council
City Hall
City of Scottsdale
3939 N. Drinkwater Blvd.
Scottsdale, AZ 85251

Re: ESLO TEXT AMENDMENT

Dear Mayor Manross and City Council Members:

Desert Mountain appreciates Council Members taking the time to meet with us and hear firsthand the concerns of our masterplanned community relative to the ESLO grandfathering provision. It is vitally important to Desert Mountain residents that the character of the community be maintained under consistent City regulations. As the developer, we have consistently made representations to buyers as to how Desert Mountain would be developed as a whole, and as to how each lot could be developed in accordance with the established building envelopes and regulations. Public reports and advertising materials contain these types of representations, and regulation changes that would affect the development rights we have represented to property owners would have serious legal and financial consequences for Desert Mountain and the City.

We continue to believe that because of the substantial investments made by both the developer and residents, Desert Mountain has the vested right to continue to develop using the ESLO regulations in effect when Desert Mountain received master plan approval. Therefore, our preference from a legal standpoint is for full grandfathering to protect the vested property rights of Desert Mountain property owners and residents. However, in a spirit of cooperation with the City, we are willing to support the currently proposed compromise language.

Desert Mountain has developed under the original ESLO regulations and our own Design Guidelines, which are stricter in some respects, in a way that the City has recognized as an excellent model for development that is sensitive to the environment. As always, we fully support ESLO and all it has accomplished in North Scottsdale.

Very truly yours,

Desert Mountain Properties

10550 East Desert Hills Drive, Scottsdale, Arizona 85262-3438. 480/595-4000, 800/323-2780, Fax 480/595-4001

www.desertmountain.com

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